SUPREME COURT, U. S.

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IN THE

Supreme Court of the United States

October Term, 1964

PETITION FOR CERTIORARI

No. 911

HYLAS N. HASTINGS,

Petitioner,

v.

CARL D. MANN, t/a Mann's Harbor Marina, Mann's Harbor, North Carolina,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FOURTH CIRCUIT

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Hylas N. Hastings prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in the above cause on January 11, 1965.

CITATIONS OF OPINIONS BELOW

The opinion of the District Court below is reported in 226 F. Supp. 962. The opinion of the

Circuit Court of Appeals, printed in the appendix hereto, has at the time of the drafting of this petition not been published in West's Federal Reports. However, the same is referred to in detail in 33 L.W. 2373.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered in this cause on January 11, 1965. The jurisdiction of this Court is invoked under the provisions of Title 28, U.S.C. §1254 (1).

STATEMENT

The petitioner, Hylas N. Hastings, is a resident and citizen of the State of Virginia. The respondent, Carl D. Mann, is a resident and citizen of the State of North Carolina, and trades as Mann's Harbor Marina, Mann's Harbor, North Carolina. The respondent owns and operates at Mann's Harbor, North Carolina, a boat launching ramp used for the purpose of launching and retrieving small boats. For the use of this ramp the respondent charges $1.00. As all boat ramps, the boat ramp in question commences on land and proceeds into the waters of Pamlico Sound at an angle, where it is secured to the bottom of said Sound. The major portion of this boat ramp is located under water. On April 19, 1963, the petitioner paid to the respondent or his duly authorized agent the sum of $1.00 in consideration for using the respondent's boat ramp for the purpose of launching the petitioner's motorboat. While in the process of launching his motorboat and while on the submerged portion of respondent's boat ramp and while standing thereon in the navigable waters of Pamlico Sound, due to the faulty and unsafe condition of the respondent's boat

ramp, the libellant was caused to fall and as a result of said fall, sustained serious injuries which are of a permanent nature. The petitioner's fall occurred and was consummated while standing on a submerged portion of the respondent's boat ramp located well within the navigable waters of Pamlico Sound. As a result of this accident, the petitioner has sustained a 30% permanent disability of his right leg.

The action in the District Court was commenced by the filing of a libel against Carl D. Mann, trading as Mann's Harbor Marina, *in personam,* on October 24, 1963. On November 8, 1963, the respondent filed an exception to the libel and a motion to dismiss on the grounds that the United States District Court sitting in admiralty did not have jurisdiction over the subject matter of the libellant's libel. On January 28, 1964, the libellant, pursuant to order of court, filed an amended libel setting forth more fully its factual contentions. Thereafter, the parties litigant each submitted to the District Court a memorandum in support of their respective positions relative to the question of jurisdiction. On March 6, 1964, the District Court filed its memorandum opinion. On March 19, 1964 the final decree dismissing libellant's libel was entered.

On May 21, 1964, the libellant herein filed his notice of appeal to the United States Circuit Court of Appeals for the Fourth Circuit. Thereafter, briefs were filed by both parties litigant, and on September 21, 1964, the matter was fully argued before the Court of Appeals for the Fourth Circuit. On January 11, 1965, the judgment of the District Court was affirmed by the appellate court below.

QUESTION PRESENTED

WHETHER A UNITED STATES DISTRICT COURT SITTING IN ADMIRALTY HAS JURISDICTION OVER A SUIT AGAINST A MARINA FOR INJURIES SUSTAINED BY A PATRON WHILE ATTEMPTING TO LAUNCH HIS MOTORBOAT OVER THE MARINA'S FAULTY BOAT RAMP, AND WHICH INJURIES WERE SUSTAINED ON THAT PORTION OF THE BOAT RAMP WHICH WAS SUBMERGED BENEATH NAVIGABLE WATERS OF THE UNITED STATES.

REASON FOR GRANTING THE WRIT

The question presented in the case at bar is a most important one, as it concerns directly the jurisdiction of a United States District Court sitting in Admiralty.

The Admiralty jurisdiction of courts of the United States was last clearly defined by this Court in 1866 in the decision of *The PLYMOUTH*, 70 U. S. (3 wall) 20. In the lapse of approximately 100 years since that decision, many changes have taken place in the maritime industry, especially is this so in the last decade, when the small power boat has become a dominant factor upon our navigable waters.

In *The PLYMOUTH*, this Court, in defining the Admiralty jurisdiction of Courts of the United States, laid down the locality rule, stating:

> "It is admitted by all authorities that the jurisdiction of the admiralty over maritime torts depends upon locality — the high seas, or navigable waters within admiralty jurisdiction."

In the case at bar the tort in question occurred when the petitioner fell from and upon the submerged portion of an allegedly faulty boat launching ramp located in the waters of Pamlico Sound, admittedly navigable waters of the United States. However, the Court below has limited the locality doctrine to torts occurring on vessels on navigable waters. In its opinion the Court below concluded:

> "The traditional distinctions remain, however, to limit Admiralty's jurisdiction when the instrumentality which caused the wrong was not a vessel on navigable waters."

This conclusion of the appellate Court below is in direct conflict with *The PLYMOUTH*, supra., where this Court state unambiguously:

> "Every species of tort, however occurring, and whether aboard a vessel or not, if upon the high seas or navigable waters, is of admiralty cognizance."

The decision of the appellate Court below is also in direct conflict with two recent decisions rendered by sister appellate Courts.

In *Weinstein* v. *Eastern Airlines, Inc.*, 316 F (2d) 758 (1963) Cert. denied 375 U. S. 940, 11 L. ed 2d 271, 84 S. Ct. 343, the United States Court of Appeals for

the Third Circuit in holding that Admiralty jurisdiction encompassed tort claims arising out of an airliner crash in Boston Harbor, stated:

> "The critical factor determining whether a tort claim comes within the broad statutory grant of Admiralty jurisdiction is the situs of the tort; i.e., the place where it happened. *If the tort occurred on navigable waters, the claim is one that lies within the jurisdiction of the Courts of Admiralty; nothing more is required.*" (Italics added for emphasis.)

It is interesting to note that the Third Circuit in the *Weinstein case, supra.*, has adopted an enlightened view recognizing that changes in maritime conditions must of necessity give rise to a broader interpretation of the Admiralty's jurisdiction. Thus the Court stated at page 763:

> "Concepts of admiralty tort jurisdiction should not and cannot remain static and unchanging."

Such an enlightened view would we submit clearly include the tort in the case at bar well within the admiralty jurisdiction. Such a view, we further submit, is in direct conflict with the concept of admiralty jurisdiction now held by the United States Court of Appeals for the Fourth Circuit.

Likewise, the decision of the appellate Court below is in direct conflict with the very recent decision of the Circuit Court of Appeals for the Sixth Circuit in the matter of *Interlake Steamship Co.* v. *Nielsen*, decided on December 3, 1964, and reported at 338 F

(2d) 879. In the *Interlake case, supra.*, the libellant's decedent died of a skull fracture occasioned by impact upon the frozen waters of Lake Erie when the car he was driving went off the end of a dock where his vessel was berthed. The District Court held that there was no admiralty jurisdiction as the impetus which put in motion the sequence of events resulting in the fatal accident had its origin on land. In reversing the District Court on this point the Appellate Court stated:

> "It seems obvious to us that the trend of case law, the impact of the Admiralty Extension Act and the effect of Calbeck, have all pointed in the direction of expanding the boundaries of admiralty jurisdiction toward land. It does not require any great clairvoyance to hold that at present admiralty jurisdiction clearly encompasses the navigable waters immediately adjacent to a dock."

Again a Circuit Court of Appeals speaks of "expanding the bounds of admiralty jurisdiction." This, we again submit, is the correct view and accords with that now held by the Third Circuit Court of Appeals and likewise is in direct conflict with the concept of admiralty jurisdiction espoused in the case at bar by the Appellate Court below.

A boat launching ramp is a structure designed for maritime uses and the petitioner at the time of his injury was at a place within the admiralty jurisdiction. It is not material to the question of jurisdiction that the submerged portion of the boat launching ramp from which and upon which the petitioner fell was secured to the bottom of Pamlico Sound, any

more than it was material in the *Interlake case, supra,* that the decedent cracked his skull on the frozen waters of Lake Erie rather than on a submerged piling of the pier from which he fell. The fact that is material in *both* cases is that the injury was consummated upon navigable waters of the United States.

CONCLUSION

In holding that admiralty is without jurisdiction in the case at bar, the Court below has ignored the basic premises laid down in *The PLYMOUTH, supra,* that "every species of tort, however occurring, and whether aboard a vessel or not, if upon . . . navigable waters, is of admiralty cognizance." Likewise, the decision of the Court below is in direct conflict with the decision of the Third Circuit Court of Appeals in the *Weinstein case, supra,* and the Sixth Circuit Court of Appeals decision in the *Interlake case, supra.*

Lastly, it is of extreme importance to all Courts of the United States that this Court, in the light of today's encounters, define with clarity the precise limits of the Admiralty Courts jurisdiction. *A fortiori,* this case warrants certiorari.

Respectfully submitted,
WALTER B. MARTIN, JR.
Proctor for Petitioner